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8 **UNITED STATES DISTRICT COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA**  
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11 CLARENCE DEMETRIUS TATE,  
12 et al.

13 Plaintiffs,

14 v.

15 VALERIE HORN, et al.

16 Defendants.  
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Case No. 2:22-cv-06464-MEMF-PD

**ORDER DISMISSING ACTION FOR  
FAILURE TO PROSECUTE**

18 **I. Pertinent Procedural History and Plaintiff's Claims**

19 On September 9, 2022, Plaintiffs Clarence Tate, William Marshall, Earle Jones, Kumi  
20 Kawamura, and Susana Osoy (collectively "Plaintiffs"), proceeding pro se, filed a Complaint  
21 pursuant to 42 U.S.C. § 1983.<sup>1</sup> [Dkt. No. 1.] The Complaint alleges that Defendants Valerie  
22 Horn, Kylale, LLC, Hasty Yadegaran, Freddy Anaraki, 2401 MLK, LLC, Daum Commercial  
23 Real Estate Services, William Michalak, City of Los Angeles, Doe Supervisor, and Does 1-10  
24 (collectively "Defendants") violated several of Plaintiffs' civil rights guaranteed under the U.S.  
25 Constitution and the California Constitution. [*Id.* at 1-2.] It further alleges that Defendants  
26 committed various crimes under the Racketeer Influenced and Corrupt Organizations Act  
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28 <sup>1</sup> Plaintiff Osoy is listed on the cover page and under the parties section of the Complaint; however, the Complaint contains no factual statements describing who Plaintiff Osoy is and what she is alleging.

1 (“RICO”), violations of California Civil Code § 52.1 (“the Bane Act”), and common law tort  
2 claims.<sup>2</sup> [*Id.*]

3 The factual allegations largely center around a property located at 2401 W Martin Luther  
4 King Blvd., Los Angeles, CA, 90008 (“the Property”) that Plaintiff Tate leased. [*Id.* at 2.] It is  
5 unclear from the Complaint whether Defendants Kylale, LLC, or Daum Real Estate Services, or  
6 2401 MLK, LLC is the lessor/owner of the Property.<sup>3</sup> At an unspecified date, Defendant  
7 Michalak, his Doe supervisor, and Defendant Anaraki entered the Property without permission of  
8 Plaintiffs, but with permission of the owner. [*Id.* at 2.] Plaintiffs allege the above Defendants  
9 conducted a warrantless search of the Property, and the search was motivated to cover up the fact  
10 that the Property was in dangerous condition. [*Id.*] Plaintiffs allege that the search violated their  
11 Fourth Amendment rights under the U.S. Constitution and their rights under the analogous  
12 provisions of the California Constitution. [*Id.* at 9.]

13 The Complaint contains additional allegations regarding Plaintiff Tate’s access to court  
14 documents in a pending civil case filed in the California Superior Court. [*Id.* at 2-4.] It further  
15 alleges that Defendants violated the California Bane Act by using threats of arrest and  
16 intimidation to interfere with Plaintiffs’ rights to be secure in their property. [*Id.* at 11.] There  
17 are no allegations that Defendants threatened to arrest Plaintiffs.<sup>4</sup> Last, Plaintiffs make several  
18 claims under RICO §§ 1961, 1962. [*Id.* at 11-13.] As best as the Court can determine, Plaintiffs  
19 allege that the above-described alleged actions of the Defendants concerning the Property indicate  
20 an overall conspiracy and pattern of racketeering. [*Id.*]

21 On November 7, 2022, the Court screened the Complaint pursuant to 28 U.S.C. §  
22 1915(e)(2)(B)(ii) and found that it failed to state a cognizable claim against any named defendant,  
23 as required by Rule 8 of the Federal Rules of Civil Procedure. [Dkt. No. 10.] The Court  
24 dismissed the Complaint with leave to amend and advised Plaintiffs that if they wished to pursue  
25 this action, they were to file a first amended complaint that corrected the defects identified by the  
26 Court in its order no later than December 9, 2022. [*Id.*]

27 On December 9, 2022, Plaintiffs filed a request to extend the deadline to file a first  
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25 <sup>2</sup> The cover page lists that Plaintiffs are bringing common law tort claims. However, there are no tort  
26 claims alleged in the Complaint.

27 <sup>3</sup> It is also unclear if there is more than one property relevant to the allegations made in the Complaint and  
28 if any other Plaintiffs are the lessees.

<sup>4</sup> Plaintiffs also allege the Defendants violated Mitchell and Coleman’s rights to be free from false arrest.  
However, neither Mitchell nor Coleman is named as a Plaintiff in the Complaint, nor are there any facts  
detailing an arrest.

1 amended complaint by five days. [Dkt. No. 11.] On December 20, 2022, the Court issued an  
 2 order extending the deadline to file a first amended complaint to January 6, 2023. [Dkt No. 12.]

3 On January 6, 2023, Plaintiffs filed a request for a second extension of the deadline to file  
 4 a first amended complaint. [Dkt Nos. 13, 14.] This request contained the declaration of Plaintiff  
 5 Clarence Tate that he had completed a first amended complaint and expected to have it filed by  
 6 January 15, 2023. [*Id.*] On January 11, 2023, the Court issued an order granting the request for a  
 7 second extension of time and set the deadline to file a first amended complaint on January 20,  
 8 2023. [Dkt. No. 15.] The Order stated that absent extraordinary circumstances, no further  
 9 extension of time to file a first amended complaint would be granted. [*Id.*]

10 On January 24, 2023, Plaintiffs filed a request for a third extension of time, to January 31,  
 11 2023, to file a first amended complaint. [Dkt. No. 16.] On January 26, 2023, the Court issued an  
 12 order granting the third request for extension of time and set the deadline to file the first amended  
 13 complaint on January 31, 2023. [Dkt. No. 17.] The Order stated that if a first amended complaint  
 14 was not filed by January 31, 2023, the Court would recommend that this action be dismissed.

15 To date, Plaintiff has not filed a first amended complaint or otherwise communicated with  
 16 the Court since January 24, 2023. Accordingly, the case is now subject to dismissal for failure to  
 17 prosecute pursuant to Rule 41(b) of the Federal Rules of Civil Procedure and Local Rule 41-6.

## 18 **II. Discussion**

19 Rule 41(b) grants district courts the authority to *sua sponte* dismiss actions for failure to  
 20 prosecute. *Link v. Wabash R.R. Co.*, 370 U.S. 626, 629-30 (1962). In determining whether  
 21 dismissal for lack of prosecution is warranted, a court must weigh several factors, including: (1)  
 22 the public's interest in expeditious resolution of litigation; (2) the court's need to manage its  
 23 docket; (3) the risk of prejudice to defendants; (4) the availability of less drastic sanctions; and (5)  
 24 the public policy favoring the disposition of cases on their merits. *Pagtalunan v. Galaza*, 291  
 25 F.3d 639, 642 (9th Cir. 2002); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992).  
 26 Dismissal is appropriate under the foregoing analysis "where at least four factors support  
 27 dismissal ... or where at least three factors 'strongly' support dismissal." *Hernandez v. City of El*  
 28 *Monte*, 138 F.3d 393, 399 (9th Cir. 1998) (citations omitted).

In this case, the first two factors – public interest in expeditious resolution of litigation and  
 the need to manage the Court's docket – weigh in favor of dismissal. Plaintiffs did not file a first  
 amended complaint on time even after numerous extension requests were granted. Plaintiffs'  
 failure to file an amended complaint—or show good cause for their delay—prevents the Court

1 from moving this case toward disposition and shows that Plaintiffs do not intend to litigate this  
2 action diligently.

3 Arguably, the third factor – prejudice to Defendants – also counsels in favor of dismissal  
4 because Defendants in this case have been served. [Dkt. Nos. 4, 5, 6, 7, 8, 9.] Further, the Ninth  
5 Circuit has held that prejudice may be presumed from unreasonable delay. *See In re Eisen*, 31  
6 F.3d 1447, 1452-53 (9th Cir. 1994); *Moore v. Teflon Commc'ns. Corp.*, 589 F.2d 959, 967-68  
7 (9th Cir. 1978). Plaintiffs' inaction in this matter is an unreasonable delay. In the absence of any  
8 explanation, non-frivolous or otherwise, for Plaintiffs' delay, the Court presumes prejudice. *See*  
9 *Laurino v. Syringa Gen. Hosp.*, 279 F.3d 750, 753 (9th Cir. 2002) (presumption of prejudice can  
10 be rebutted by a non-frivolous explanation); *Pagtalunan*, 291 F.3d at 642 (citing *Yourish v.*  
11 *California Amplifier*, 191 F.3d 983, 991 (9th Cir. 1999)).

12 The fourth factor – the availability of less drastic sanctions – ordinarily counsels against  
13 dismissal. However, the Court attempted to avoid outright dismissal by giving Plaintiffs ample  
14 time to communicate with the Court and file an amended complaint. Plaintiffs were also  
15 expressly warned that failure to comply with the Court's orders could result in dismissal. [Dkt.  
16 Nos. 12, 15, 17.] Thus, the Court explored the only meaningful alternatives to dismissal in its  
17 arsenal and found that they were not effective. *See Henderson v. Duncan*, 779 F.2d 1421, 1424  
18 (9th Cir. 1986) ("The district court need not exhaust every sanction short of dismissal before  
19 finally dismissing a case, but must explore possible and meaningful alternatives.") (citation  
20 omitted).

21 The fifth factor – the general policy favoring resolution on the merits – ordinarily weighs  
22 against dismissal. *Pagtalunan*, 291 F.3d at 643. It is, however, the responsibility of the moving  
23 party to move the case toward disposition on the merits at a reasonable pace and to refrain from  
24 dilatory and evasive tactics. *Morris v. Morgan Stanley & Co.*, 942 F.2d 648, 652 (9th Cir. 1991).  
25 Because Plaintiffs have failed to diligently participate in their lawsuit, retention of this case would  
26 not increase the likelihood of the matter being resolved on its merits. This factor does not weigh  
27 in favor of or against dismissal.

28 In sum, four out of the five factors support dismissal. The Court concludes that dismissal  
for failure to prosecute is warranted.

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1 For the foregoing reasons, this action is dismissed for failure to prosecute.

2 **IT IS SO ORDERED.**

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4 Dated: July 5, 2023

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United States District Judge